Remarks

Claims 22-45, 47-56 and 58-63 are pending in the captioned application. The Office Action rejected each of the claims "under 35 U.S.C. §135(b)(1) as not being made prior to one year from the date on which U.S. Patent No. 6,239,744 was granted." There was no further discussion at all. There was no discussion with respect to individual claims, or why any particular claim should be rejected under 35 U.S.C. §135(b)(1).

Applicants respectfully traverse the rejection. The '744 patent was granted on 29 May 2001. Claims 22-45 (copied from the '744 patent) were made on 13 March 2002, **less than one year from the date on which the '744 patent was granted**. At that time, an interference was requested with the '744 patent and with application Ser. No. 09/817,268. The '268 application was published on 25 October 2001 and was identified as a continuation of the application which issued as the '744 patent.

The '268 application subsequently issued on 13 January 2004 as U.S. Patent No. 6,677,896, and the issued claims were not the same as the claims in the '268 application as originally published. Claims 47-56 and 58-63 (copied from the issued '896 patent) were added to the captioned application on 20 April 2004, less than one year from the date on which the '896 patent was granted. At that time, an interference was requested with the '744 patent and with the '896 patent.

The triggering condition for a §135(b) rejection is that "none of the claims which were present in the application... prior to the expiration of the one-year period meets the 'substantially the same subject matter' test..." MPEP §2304.02(c)II. This condition does not apply with respect to the captioned application where claims 22-45 were copied from the '744 patent less than a year after the '744 patent issued. As stated above, the Office Action did not provide any factual basis for asserting that any particular claim violated 35 U.S.C. §135(b)(1), and it is unquestionable that the claims of the '744 patent were copied within the one-year period.

The claims have previously been identified as allowable. If there is interfering subject matter, then an interference should be declared. If there is no interfering subject matter, then the application should be allowed. If a telephone conference would expedite prosecution of the captioned application, the applicants respectfully request that a telephone call be made to the undersigned at the below-listed telephone number. The applicants request reconsideration, and either declaration of an interference or a Notice of Allowance.

Respectfully submitted,

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